

IN THE HIGH COURT OF KENYA

AT NAKURU

MURDER CASE NO.93 OF 2013

JOHN KIHARA NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application is brought by way of Notice of Motion under the provisions of Article 49 of the Constitution of Kenya, 2010.

The applicant has been charged with the offence of murder and is seeking to be admitted to bail pending finalization of the trial. The applicant relies on the face of the application and his supporting affidavit made on the 16th December, 2013.

The application was opposed by the Prosecuting Counsel for the State and reliance was placed on the Replying Affidavit sworn by P.C. Stephen Ombigwa and dated the 11th February, 2014.

The deponent states that the applicant may be harmed by the community if released on bail. That the relatives of the deceased are the applicant's neighbours and that there is still a lot of hostility and tension between them. The deponent further avers that there is a likelihood that the applicant may interfere with witnesses. That one suspect is still at large and by releasing the applicant on bail, it would become difficult for the police to find and arrest the said suspect.

Taking into consideration the submissions made by Counsel for the Applicant, concerning his advanced age and ill health, this court ordered Pre-Bail Report to be prepared by the Probation Office on the suitability of admitting the applicant to Bail. The report was tendered into court on 19th March, 2014.

From the report, this court notes that the families of the deceased and of the accused are neighbours and that there is a long outstanding dispute over land. The Reports confirms that the situation on the ground is still hostile and tense and that the accused's family was forced to flee from the area. Indeed releasing the Applicant to go and live in the same community would endanger his life.

Having heard the submissions of Counsel for the applicant and Prosecuting Counsel for the State and upon perusing the Pre-Bail Report, this court is persuaded and finds the Report favourable to the applicant as it recommends that he may be released on bail provided that he is placed under the custody of his sister Esther Muthoni Chege who lives in Kitale, Trans Nzoia County.

For the reasons as stated above, the application for Bail pending trial is hereby allowed upon the following terms:

1. The applicant is hereby admitted to Bail/Bond in the sum of Kshs.250,000/= with two sureties of a similar amount.
2. The applicant shall be of good conduct and shall report to court on time and on the dates required for his attendance.
3. The Applicant shall report to the Kitale D.C.I.O's office on the last working day of each and every succeeding month until the trial is concluded.

It is so ordered.

Dated, Signed and Delivered at Nakuru this 27th day of March, 2014.

A. MSHILA

JUDGE